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10 MAR 26 PM 3:28

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

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12 Attorneys for
PHL VARIABLE INSURANCE CO.
13 *pro hac vice application to be filed

14 UNITED STATES DISTRICT COURT

15 SOUTHERN DISTRICT OF CALIFORNIA

16 PHL VARIABLE INSURANCE CO.,

17 Plaintiff,

18 v.

19 KRISTIAN GIORDANO; and THE
YVONNE TRAVISANO FAMILY
20 INSURANCE TRUST, by and through
its trustee, BRENDA BARRERA, and
21 DOES 1-100.

22 Defendants.

16 Case No.

17 '10 CV 0661WQH

18 BLM

19 PLAINTIFF PHL VARIABLE
20 INSURANCE COMPANY'S
21 ORIGINAL COMPLAINT

1 PHL Variable Insurance Company, by and through its attorneys, files this
2 Original Complaint against Kristian Giordano and the Yvonne Travisano Family
3 Insurance Trust by and through its Trustee, Brenda Barrera as follows:

4 **I. INTRODUCTION**

5 1. This is an action for declaratory judgment under 29 U.S.C. § 2201,
6 fraud, conspiracy, negligent misrepresentation, and breach of contract stemming
7 from the fraudulent procurement of a four million dollar insurance policy on the
8 life of Yvonne Travisano ("Ms. Travisano") (the "Policy").

9 2. In recent years, a derivative market for life insurance has developed in
10 which existing life insurance policies are sold to third parties who lack an insurable
11 interest in the life of the insured. Typically referred to as a "life settlement" or
12 "senior settlement," these sales are generally lawful, assuming that the policy was
13 procured for legitimate purposes and that there was an insurable interest at the
14 policy's inception.

15 3. As this derivative market has developed; however, there has been a
16 proliferation of life insurance policies that are not sought for legitimate insurance
17 needs but rather for re-sale to strangers in the secondary market. Policies procured
18 under these circumstances have become known as stranger originated life
19 insurance ("STOLI") policies. STOLI policies are illegal wagering contracts that
20 lack an insurable interest at inception. As such, STOLI policies are void *ab initio*.

21 4. In many cases, STOLI policies are initiated with fraudulent
22 representations in the insurance application. Insurers, in an effort to prevent
23 issuing STOLI policies, require insurance applicants and insurance agents to
24 respond to specific questions during the application process regarding the purpose
25 of the insurance sought. STOLI promoters will falsely answer these questions in
26 order to obtain the insurance sought. Additionally, in order to maximize their
27 profit, STOLI promoters frequently provide insurers with false information

1 regarding an insured's financial status in order to obtain a policy with a larger face
 2 amount. In some cases, insureds are unaware of the misrepresentations made on
 3 the application and during the application process.

4 5. STOLI schemes have become so prevalent that they have been the subject of consumer fraud alerts issued by numerous state insurance departments, including the California Department of Insurance.¹

7 6. In furtherance of a STOLI scheme, insurance producer Kristian Giordano ("Giordano") procured the Policy from Phoenix. In doing so, Giordano made numerous and fraudulent misrepresentations relating to Ms. Travisano's financial status, the purpose of the Policy, and the intent for investors to obtain an interest in the Policy.

12 7. Phoenix brings this action for rescission of the Policy and an order declaring the Policy void *ab initio*, and seeks money damages against the Defendants.

15 **II. PARTIES**

16 8. Plaintiff, PHL Variable Life insurance Company ("Phoenix") is a corporation organized under the laws of the State of Connecticut and maintains its principle place of business in the state of Connecticut within the meaning and intent of 28 U.S.C. § 1332. Phoenix is authorized to transact the business of insurance in California.

21 9. Defendant, the Yvonne Travisano Family Insurance Trust (the "Trust"), is a trust organized under the laws of California and is a citizen of California within the meaning and intent of 28 U.S.C. § 1332. The Trust may be served through its Trustee, Brenda Barrera ("Trustee"), at 401 West A Street,

26 ¹ Cal. Dep't of Ins., Seniors: Senior Advisory on STOLI or SPINLIFE Life
 27 Insurance Schemes, *available at* <http://www.insurance.ca.gov/0150-seniors/0100alerts/strangerownedlifeins.cfm>; <http://www.insurance.ca.gov/0150-seniors/0100alerts/upload/SA0108Stoli2.pdf>

1 #1815, San Diego, California 92101. On information and belief, Trustee Brenda
2 Barrera is the only trustee and is a resident of California.

3 10. Defendant, Kristian Giordano, is a California resident and citizen.
4 Upon information and belief, he may be served at 40801 Carlena Lane, Temecula
5 CA 92591-2127.

6 11. The true names and capacities, whether individual, corporate,
7 associate or otherwise, of Defendants Does 1-400, inclusive, are unknown to
8 Phoenix at this time, who therefore sue said Defendants by such fictitious names,
9 and when the true names and capacities of said Defendants are ascertained,
10 Phoenix will seek leave from the Court to amend this Complaint accordingly;
11 Phoenix is informed and believes and therefore alleges that each of the Defendants
12 designated herein as a Doe is responsible in some manner for the events and
13 happenings herein referred to, and caused damages to Phoenix proximately thereby
14 as herein alleged.

15 **III. JURISDICTION AND VENUE**

16 12. This Court has jurisdiction over all parties of this lawsuit under 28
17 U.S.C. § 1332(a)(1) because Phoenix and Defendants are citizens of different
18 states, and the amount in controversy exceeds \$75,000, exclusive of attorneys'
19 fees, interest and costs. Defendants are subject to the personal jurisdiction of this
20 Court.

21 13. This Court has jurisdiction for the declaratory judgment action
22 pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. §§2201 and 2202, that grant the
23 United States District Courts jurisdiction to declare the "rights and other legal
24 relations of any interested party making such declaration, whether or not further
25 relief is or could be sought."

26 14. Venue is proper for this action pursuant to 28 U.S.C. § 1391, since
27 Giordano is a citizen of California, the Trust is a citizen of California, its Trustee is
28

1 located in California, and the insurance policy at issue is governed by California
2 law.

3 **IV. FACTUAL BACKGROUND**

4 15. Phoenix is, and during all relevant times has been, in the business of
5 underwriting and issuing policies for life insurance and is authorized to transact the
6 business of insurance in the State of California.

7 16. Giordano is an independent life insurance producer. As such, he
8 solicits applications for life insurance policies on behalf of numerous insurance
9 carriers. Giordano is neither an employee nor a career agent of Phoenix.

10 17. Giordano entered into an Independent Producer Contract with Phoenix
11 (the "Producer Contract"). The Producer Contract sets out the terms of Giordano's
12 relationship with Phoenix as an Independent Producer. Among other terms, the
13 Producer Contract requires that Giordano give complete and accurate answers in
14 insurance application and associated forms and that Giordano provide Phoenix
15 with all information necessary to underwrite applications solicited by Giordano.
16 Further, the Producer Contract requires that a Producer not accept any payment
17 unless the insurance applicant is, at the time of delivery, in good health and in
18 insurable condition as originally represented.

19 18. Upon information and belief, an agent or employee of Giordano
20 approached Paul Loven, a Scottsdale, Arizona insurance producer, stating that he
21 worked with a group in California that could obtain no-cost insurance for Mr.
22 Loven's clients. Mr. Loven placed Giordano's agent in contact with Ms.
23 Travisano, a resident of Scottsdale and a client of Mr. Loven. Giordano met with
24 Ms. Travisano, and offered to obtain insurance coverage for Ms. Travisano,
25 promising Ms. Travisano that she would pay no money out of pocket for two-
26 years, and that at the end of two-years, she could either repay the premiums or, if
27 she didn't want to keep the policy, it would be sold and she would be paid a
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1 substantial amount following the policy's sale. Ms. Travisano agreed to participate
2 with the understanding she would not pay any policy premiums and that she would
3 receive a substantial payment after the policy was sold. Ms. Travisano's husband
4 provided Giordano with a financial statement showing the Travisanos' net worth as
5 \$3,049,000. Giordano then caused the Trust to be established, with the intent that
6 the Trust would own the Policy on behalf of STOLI investors.

7 19. The Trust, by and through its Trustee, then submitted a written
8 application to Phoenix seeking the issuance of an insurance policy, insuring the life
9 of Ms. Travisano (the "Application").

10 20. The Application requested material information regarding, among
11 other things, Travisano's net worth, the purpose of the insurance, the source of
12 funding for premiums, and any intent or understanding that a third-party would
13 obtain an interest in the policy applied for. In response to these questions, the
14 Application represented that Travisano had a net worth of \$5,728,322, that the
15 insurance was sought for Travisano's estate planning, that premiums would not be
16 financed, that no individual or entity other than Ms. Travisano would pay the
17 premiums, and that there was no understanding that the policy would be sold to a
18 third-party.² As discussed more fully below, each of these representations was
19 false and was material to Phoenix's acceptance of the risk assumed.

20 21. In submitting the Application to Phoenix, Ms. Travisano, Giordano
21 and the Trust knew that each was required to provide complete, accurate and
22 honest answers to the questions presented on the Application. Ms. Travisano,
23 Giordano and the Trust also knew that Phoenix would rely upon the answers
24 recorded on the Application in determining whether Travisano was insurable and
25 qualified for the insurance sought through the Application.

26 22. The Application contained the following affirmations:

27 28 ² Specifically, questions 8, 9, 10, 11, 12, 14 and 15 in Section XI were
answered incorrectly.

1 I have reviewed this application and the statements made
2 herein and those of the proposed insured and all such
3 statements made by the proposed insured in Part I or and
4 in Part II of this application are full, complete and true to
5 the best knowledge and belief of the undersigned and
6 have been correctly recorded.

7 * * *

8 The Producer hereby confirms he/she has truly and
9 accurately recorded on the application the information
10 supplied by the Proposed Insured . . .

11 Ms. Travisano, Giordano and the Trust, through its trustee, executed the
12 Application on February 22, 2008.

13 23. Based upon the statements and representations on the Application,
14 Phoenix issued life insurance policy number 97528282 to the Trust, with an
15 effective date of April 4, 2008. The Policy's death benefit is \$4,000.000.

16 24. Upon information and belief, Giordano was aware that Ms.
17 Travisano's net worth was not \$5,728,322 but falsely recorded Ms. Travisano's net
18 worth as \$5,728,322 on the Application in order to obtain the Policy.

19 25. Upon information and belief, neither Ms. Travisano nor any party
20 with an insurable interest in her life funded the payment of premiums on the
21 Policy.

22 26. Had Giordano and the Trust provided accurate responses on the
23 Application, Phoenix would not have issued the Policy or would have done so on
24 materially different terms. As a result of the Policy's issuance, Phoenix has
25 suffered damages, including but not limited to commissions Phoenix paid to
26 Giordano that it would not have paid, but for the sale.

27. Phoenix brings this action seeking rescission of the Policy, and an order declaring the Policy void *ab initio*.

28. Further, Phoenix is also entitled to an award of punitive damages based on the wanton, malicious, deliberate and/or grossly negligent conduct of Giordano as described herein.

V. CAUSES OF ACTION

COUNT I: DECLARATORY JUDGMENT:

RESCISSION DUE TO MATERIAL MISREPRESENTATION

(As to the Trust)

29. Phoenix incorporates herein by reference each of its allegations contained in Paragraphs 1–28 above.

30. Pursuant to the federal Declaratory Judgment Statute, 28 U.S.C. § 2201, Phoenix seeks a declaratory judgment that the Policy is null, void and rescinded *ab initio* due to the fraudulent and/or material misrepresentations and omissions made on the Application, and that as a result of said rescission, Phoenix may deposit with the Clerk of the Court all premiums paid on the Policy along with required interest, if any, pending further dispensation by the Court.

31. Phoenix seeks a declaratory judgment that, pursuant to Section 483(c) of the California Insurance Code, the Trust is not entitled to a return of the Policy premiums due to actual fraud. Alternatively, Phoenix seeks a declaratory judgment that Phoenix be allowed to offset from the Policy premiums an amount equal to the commissions paid to Giordano or additional sales representatives arising out of or relating to the sale of the Policy, other costs associated with the Policy, as well as its attorneys' fees and expenses.

32. Phoenix also seeks its fees pursuant to the Declaratory Judgment Statute.

33. To the extent required by law, Phoenix fully and unconditionally tenders the Policy's premiums to the Court's registry.

**COUNT II: DECLARATORY JUDGMENT:
RESCISSION – LACK OF INSURABLE INTEREST
(As to the Trust)**

34. Phoenix incorporates herein by reference each of its allegations contained in Paragraphs 1–33 above.

35. Pursuant to the federal Declaratory Judgment Statute, 28 U.S.C. § 2201, Phoenix seeks a declaratory judgment that the Policy is null, void and rescinded *ab initio* due to the lack of insurable interest. The Policy was purchased with the intent to benefit a third party, which lacked the requisite insurable interest in Yvonne Travisano's life at the time of issuance. The Policy's issuance violates the letter and spirit of California and Arizona law on insurable interest and is inconsistent with both states' public policy of prohibiting the wagering on the lives of others. The Application for and the purported ownership of the Policy by the Trust is merely a sham transaction intended to circumvent and violate applicable insurable interest laws and public policy. The Policy is, therefore, void *ab initio* and is of no force and effect from its inception.

36. Phoenix seeks a declaratory judgment that the Policy is null, void and rescinded *ab initio* due to the lack of insurable interest and that as a result of said rescission, Phoenix may deposit with the clerk of the Court all premiums paid on the Policy along with required interest, if any, pending further dispensation by the Court.

37. Phoenix seeks a declaratory judgment that, pursuant to Section 483(c) of the California Insurance Code, the Trust is not entitled to a return of the Policy premiums due to actual fraud. Alternatively, Phoenix seeks a declaratory judgment that Phoenix be allowed to offset from the Policy premiums an amount equal to the

1 commissions paid to Giordano or other sales representatives arising out of or
2 relating to the sale of the Policy, other costs associated with the Policy, as well as
3 its attorneys' fees and expenses.

4 38. Phoenix also seeks its fees pursuant to the Declaratory Judgment
5 Statute.

6 39. To the extent required by law, Phoenix fully and unconditionally
7 tenders the Policy's premiums to the Court's registry.

8 **COUNT III: FRAUD**

9 **(As to all Defendants, including Does 1-100)**

10 40. Phoenix incorporates herein by reference each of its allegations
11 contained in Paragraphs 1-39 above.

12 41. The Trust and Giordano procured the Policy for the purpose of selling
13 it in the secondary market. As stated above, upon information and belief,
14 Giordano and the Trustee made fraudulent misrepresentations regarding, among
15 other things, the true purpose of the Policy and Ms. Travisano's financial
16 condition. Giordano and the Trust intended that Phoenix rely on these
17 misrepresentations in issuing the Policy.

18 42. Each fraudulent misrepresentation was material to Phoenix's decision
19 to issue the Policy and Phoenix justifiably relied on these fraudulent
20 misrepresentations in issuing the Policy. Indeed, Phoenix would not have issued
21 the Policy had it known the true facts surrounding it.

22 43. Phoenix has incurred substantial damages as a result of the wrongful
23 conduct of Giordano and the Trustee, including, but not limited to, costs and
24 expenses associated with the issuance of the Policy.

25 44. Phoenix is also entitled to an award of punitive damages based on the
26 wanton, malicious, deliberate and/or grossly negligent conduct of Giordano and the
27 Trust as described herein.

COUNT IV: CIVIL CONSPIRACY
(As to all Defendants, including Does 1-100)

45. Phoenix incorporates herein by reference each of its allegations contained in Paragraphs 1–44 above.

46. Defendants and others, including Does 1-100, conspired and agreed to commit fraud to induce Phoenix to issue the Policy by, among other things, participating in, facilitating and/or directing the: (i) solicitation of Ms. Travisano's participation in a STOLI arrangement; (ii) submission of the Application for the Policy to Phoenix, which Defendants knew lacked an insurable interest; (iii) establishment of the Trust to conceal the absence of an insurable interest in connection with the Policy; (iv) concealment from Phoenix that there was a lack of insurable interest at the inception of the Policy; and (v) falsifying representations concerning the Travisanos' financial condition.

47. In furtherance of their collaborative and conspiratorial agreement to commit a fraud against Phoenix, Defendants knowingly and purposefully concealed the lack of any insurable interest in connection with the procurement of the Policy and knowingly and purposefully placed false information on the Application for the Policy to induce Phoenix to issue the Policy. At all times material hereto, Defendants acted in furtherance of a common plan, scheme or design intended to benefit them and profit from the scheme at Phoenix's expense.

48. Defendants knew of their own concealment, and that of their co-conspirators, regarding the lack of insurable interest and the fraudulent misrepresentations made in connection with the Policy. Further, each knew that Phoenix would rely on these acts in determining whether to issue the Policy. Defendants furthered this conspiracy by, among other things, concealing the lack of insurable interest in the Policy and by providing false information on the Application for the Policy and/or failing to correct false information.

1 49. Phoenix has incurred substantial damages as a result of Defendants'
2 wrongful conduct, including but not limited to, the payment of commissions and
3 the policies' acquisition and maintenance costs.

COUNT V: NEGLIGENT MISREPRESENTATION

(As to all Defendants, including Does 1–100)

6 50. Phoenix incorporates herein by reference each of its allegations
7 contained in Paragraphs 1–49 above.

8 51. Defendants supplied false information to Phoenix in submitting the
9 Application for the Policy, which constituted a transaction in which each
10 Defendant had a pecuniary interest. Further, Defendants owed a duty to Phoenix
11 and failed to exercise reasonable care in making the representations. Additionally,
12 or alternatively, Defendants made misrepresentations with conscious disregard for
13 their truth or falsity.

14 52. Phoenix reasonably and justifiably relied on these misrepresentations
15 and suffered damages as a result.

COUNT VI: BREACH OF CONTRACT

(As to Giordano)

18 53. Phoenix incorporates herein by reference each of its allegations
19 contained in Paragraphs 1–52 above.

54. At all times hereto, Phoenix and Giordano were parties to a contract.

21 55. Giordano breached the Producer Contract by providing Phoenix false,
22 incomplete, and/or inaccurate answers in the Application and associated forms.
23 Further, Giordano breached the Producer Contract by delivering the Policy
24 knowing that the owner lacked an insurable interest, that the purpose of the
25 insurance was falsely stated, and that the net worth value reported for Ms.
26 Travisano was false.

1 56. Phoenix has suffered damages as a direct and proximate result of
2 Giordano's breach of contract.

VI. RELIEF REQUESTED

4 WHEREFORE, due to the above-reference fraudulent and/or material
5 misrepresentations, fraud, negligent misrepresentation, conspiracy, and breach of
6 contract, Phoenix demands judgment against the Yvonne Travisano Family
7 Insurance Trust by and through it Trustee Brenda Barrera and against Kristian
8 Giordano as follows:

9 (a) an order declaring and adjudging the Policy of life insurance bearing
10 Policy Number 97528282 to be null and void and rescinded, *ab initio*;

11 (b) an order that Phoenix deposit with the Clerk of the Court all premiums
12 paid on the Policy along with the required interest, if any;

13 (c) an order that the Clerk of Court return to Phoenix all of the
14 premiums deposited with the Court or, alternatively, an order that the Clerk of the
15 Court pay to Phoenix from the premiums deposited an amount equal to: 1) the
16 commissions paid by Phoenix to Kristian Giordano and/or other sales agents
17 arising out of or relating to the sale of the Policy; and 2) any damages incurred by
18 Phoenix as a result of the Policy's issuance and subsequent investigation, including
19 attorneys' fees and expenses;

20 (d) an order awarding cost of suit and reasonable attorneys' fees pursuant
21 to the Federal Declaratory Judgment Statute;

22 (e) all actual damages to which Phoenix may be entitled;

23 (f) punitive damages due to Defendants' intentional fraud;

24 (g) reasonable and necessary attorneys' fees and other costs incurred in
25 this action;

26 (h) pre-judgment and post-judgment interest at the maximum lawful rate;

27 (i) costs of court; and

1 (j) such other and further relief as the Court deems equitable and just to
2 Phoenix.

3 Dated: March 26, 2010

HAYNES AND BOONE, LLP

4 By: 

5 KENNETH G. PARKER

6 THOMAS F.A. HETHERINGTON
7 COURTNEY L. SCANTLIN
8 JARRETT E. GANER
EDISON, McDOWELL &
HETHERINGTON LLP

9 Attorneys for Plaintiff
10 PHL VARIABLE INSURANCE
COMPANY

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Court Name: USDC California Southern
Division: 3
Receipt Number: CAS011592
Cashier ID: mbain
Transaction Date: 03/26/2010
Payer Name: NORCO

CIVIL FILING FEE
For: PHL VARIABLE INS V GIORDANO
Case/Party: D-CAS-3-10-CV-000661-001
Amount: \$350.00

CHECK
Check/Money Order Num: 26909
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

PHL VARIABLE INSURANCE CO.

(b) County of Residence of First Listed Plaintiff Connecticut
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kenneth G. Parker, Haynes and Boone, LLP
18100 Von Karman Ave. #750, Irvine, CA 92612; 949.202.3000

DEFENDANTS

KRISTIAN GIORDANO; and THE YVONNE TRAVISANO
FAMILY INSURANCE TRUST, trustee, BRENDAL BARRERA
County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorney's (If Known)

10 CV 0661 WQH

BLM

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	PTF	DEF	
	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 510 Selective Service	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Securities/Commodities/ Exchange	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 410 HIA (1395ff)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 420 Employment	<input type="checkbox"/> 861 Black Lung (923)	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 862 DIWC/DIWW (405(g))	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 863 SSID Title XVI	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 864 RSI (405(g))	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	SOCIAL SECURITY	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 862 Black Lung (923)	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 864 SSID Title XVI	
			<input type="checkbox"/> 865 RSI (405(g))	
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
				<input type="checkbox"/> 890 Environmental Matters
				<input type="checkbox"/> 894 Energy Allocation Act
				<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
				<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7

Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. § 2201

Brief description of cause: declaratory judgment for fraud, conspiracy, negligent misrepresentation, and breach of contract

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMANDS

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S)

(See instructions):

JUDGE Barry Ted Moskowitz

DOCKET NUMBER 09-CV-2344-BTM-POR

DATE

03/26/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 11592

AMOUNT \$350

APPLYING IPP

JUDGE

MAG. JUDGE

OK
AB63-26-10

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.